

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

COMMERCIAL CREDIT GROUP INC. *
525 N. Tryon Street, Suite 1000
Charlotte, NC 28202 *

Plaintiff *

v. * CIVIL ACTION NO.:

KIRBY E. DELAUTER *
109 Park Lane
Thurmont, Maryland 21788 *

and *

CHRISTOPHER KELLY *
2 Creamery Way
Emmitsburg, Maryland 21727 *

Defendant *

* * * * * * * * * * * * *

COMPLAINT FOR CONVERSION AND OTHER RELIEF

Commercial Credit Group Inc. (“CCG”), Plaintiff, by its attorney, Stanford G. Gann, Jr., files this Complaint and sues Defendants, Kirby E. Delauter (“Delauter”) and Christopher Kelly (“Kelly”) (hereinafter collectively “Defendants”), and states as follows:

JURISDICTIONAL ALLEGATIONS

1. Plaintiff brings this action against Defendants seeking damages in excess of \$75,000.00 exclusive of interest, costs, and attorneys’ fees arising from Defendants’ conversion of CCG’s collateral.
2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1332.

3. Plaintiff, CCG, an equipment finance lender, is a Delaware corporation with its principal place of business in Charlotte, North Carolina.
4. Defendant, Delauter, is a resident of Maryland.
5. Defendant, Kelly, is a resident of Maryland upon information and belief.
6. Venue is appropriate in this Court as Defendants reside or engage in regular business in Frederick County, Maryland and a substantial portion of the events giving rise to CCG's claims occurred in Frederick County, Maryland.

FACTUAL ALLEGATIONS

7. On October 29, 2020, CCG and Green Valley Contracting, L.L.C. ("Green Valley") entered into a Promissory Note and Security Agreement in the amount of \$359,680 (the "Note"), which was secured by, among other things, a 2019 Caterpillar Excavator, Model 330 TC with 36-inch and 66-inch buckets, Serial Number LHW01031 (the "Excavator") and a 2012 Bobcat Track Loader, Model T650, Serial Number A3P015092 (the "Bobcat"). Under the terms of the Note, Green Valley also granted CCG a security interest in all of Green Valley's other equipment, including a 2020 Liebherr 632 track loader, Serial Number 393-2210 (the "Liebherr"). The Excavator, the Bobcat, and the Liebherr are hereinafter referenced collectively as the "Equipment").

8. CCG's liens on the Equipment were fully secured and perfected by the filing of the appropriate UCC financing statement.

9. Upon information and belief, in August or September of 2022, with actual knowledge, as well as constructive notice, of CCG's lien, W.F. Delauter & Son, Inc. and/or

Delauter Leasing, LLC took possession of the Equipment without any notice to CCG under what was, upon information and belief, some sort of joint venture agreement with Green Valley.

10. Delauter is and was at all material times hereto the principal of both W.F. Delauter & Son, Inc. and Delauter Leasing, LLC, who was directly involved with, inspired, directed and committed the acts and omissions referenced in this Complaint pertaining to the Equipment.

11. Upon information and belief, Kelly was at all material times hereto the chief financial officer of both W.F. Delauter & Son, Inc. and Delauter Leasing, LLC, who was directly involved with and committed the acts and omissions referenced in this Complaint pertaining to the Equipment.

12. Upon information and belief, Delauter and Kelly directly participated in the taking of possession of the Equipment and the sale or other disposition of the Bobcat and the Liebherr at some point after September, 2022, and, in May of 2024, decided and directed to include the Excavator in an auction of the assets of Delauter Leasing and WF Delauter & Son, Inc.

13. In May of 2024, CCG first learned, after W.F. Delauter & Son, Inc. and Delauter Leasing, LLC filed a petition for relief under chapter 11 of the U.S. Bankruptcy Code, that Delauter on behalf of W.F. Delauter & Son, Inc. and/or Delauter Leasing, LLC had taken possession of the Equipment in conversion of CCG's rights and interests, and that Delauter had orchestrated a sale of the Bobcat and the Liebherr at some time prior to the bankruptcy filing.

14. Upon information and belief, Christopher Kelly was also directly involved with and participated in the activities above, including but not limited to the sale or other disposition of the Bobcat and the Liebherr.

15. CCG is still owed in excess of \$137,000 for the Equipment.

16. Delauter has orchestrated and participated in use of the equipment by W.F. Delauter & Son, Inc. and/or Delauter Leasing, LLC, which use has resulted in the depreciation and diminution in value of the Equipment.

17. Defendants' acts and omissions have caused CCG to become involved in the bankruptcy case and litigation and to incur legal fees, expenses and costs to try to extricate the Excavator from those proceedings.

18. As a direct and proximate result of the Defendants' acts and omission, CCG has incurred and will continue to incur damages in excess of \$75,000.

19. CCG reserves the right to add additional parties and claims as discovery indicates.

Count I
Conversion

20. CCG incorporates by reference the allegations contained in all of the above paragraphs as if fully recited in this Count.

21. Without permission from or notice to CCG, Defendants intentionally took possession of and converted the Equipment.

22. Defendants exercised dominion and control over the Equipment.

23. As a direct and proximate result of the Defendants' conversion, acts and omissions, CCG has incurred and will continue to incur substantial damages.

WHEREFORE, CCG requests that this Honorable Court:

(a) Award CCG a Judgment against Defendants in an amount in excess of \$75,000, plus the costs, interest and the attorneys' fees associated with these proceedings and in the proceedings to extricate the Excavator from the Chapter 11 bankruptcy cases filed by Delauter Leasing and W.F. Delauter & Son, Inc.;

- (b) Order Defendants to account for the details of the sale or disposition of the Bobcat and the Liebherr; and
- (c) Grant CCG such other and further relief as the Court deems appropriate.

Count II
Intentional Interference with Contract

24. CCG incorporates the allegations contained in paragraphs 1 through 19 by reference as if fully restated in this Count.

25. Defendants were aware of the Note, including the security agreement in favor of CCG and the UCC financing statement either before or shortly after they directed and/or participated in W.F. Delauter & Son, Inc. and/or Delauter Leasing, LLC taking possession of and converting the Equipment.

26. Defendants willfully, wantonly, intentionally, wrongfully and with malice interfered with the agreement between CCG and Green Valley.

27. As a direct and proximate result of Defendants' interferences, acts and omissions, CCG has incurred and will continue to incur substantial damages.

WHEREFORE, CCG requests that this Honorable Court:

- (a) Award CCG a Judgment against Defendants in an amount in excess of \$75,000, plus punitive damages of a reasonable multiple of CCG's compensatory damages and attorneys' fees incurred, plus the costs, interest and the attorneys' fees associated with these proceedings and the chapter 11 cases filed by Delauter Leasing and W.F. Delauter & Son, Inc.;
- (b) Order Defendants to account for the details of the sale or disposition of the Bobcat, the Liebherr, and for any disposition of the Excavator as a consequence of the bankruptcy proceedings; and

(c) Grant CCG such other and further relief as the Court deems appropriate.

Count III
Intentional Interference with Business Relations

28. CCG incorporates the allegations in paragraphs 1 through 19 and 25 by reference as if fully restated in this Count.

29. Defendants willfully, wantonly, intentionally, wrongfully and with malice interfered with CCG's business relations.

30. As a direct and proximate result of Defendants' interferences, acts and omissions, CCG has incurred and will continue to incur substantial damages.

WHEREFORE, CCG requests that this Honorable Court:

(a) Award CCG a Judgment against Defendants in an amount in excess of \$75,000, plus punitive damages of a reasonable multiple of CCG's compensatory damages and attorneys' fees incurred, plus the costs, interest and the attorneys' fees associated with these proceedings and the chapter 11 cases filed by Delauter Leasing and W.F. Delauter & Son, Inc.;

(b) Order Defendants to account for the details of the sale or disposition of the Bobcat and the Liebherr; and

(c) Grant CCG such other and further relief as the Court deems appropriate.

Respectfully submitted,
/s/ Stanford G. Gann, Jr.
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